

**REMARKS**

Claims 1 – 51 are pending. Claims 1, 5, 15, 20, 31, 36, 44 - 48 have been cancelled. Claims 23–30 and 39-43 have been withdrawn from consideration as the result of an earlier restriction requirement. Claims 2–3, 6–11, 14, 16, 18, 19, 21–22, 32, 35, and 37-38 are amended. Claims 49-57 have been newly added. In summary, claims 2-4, 6-14, 16-19, 21-22, 32-35, 37-38, and 49-57 are in the case and presented for examination; of these, claims 49, 50 and 51 are in independent format, and all other claims are in dependent format.

In view of the Examiner's earlier restriction requirement, applicant has presented withdrawn claims 23–30 and 39-43 in a divisional application, Serial No. 11/803767, filed May 16, 2007.

Claims 2-4, 6-14, 16-19, 21-22, 32-35, 37 and 38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bee (EP 0395145) and Jones (US 5126156) in view of the dippin' dots publication. Bee teaches a frozen food product for preparing a milk shake composition comprising an edible gas hydrate clathrate at least in an amount sufficient to provide and bring about some overrun; as stated in Bee, the hydrate clathrate is used as an aerating agent. Jones teaches a method for preparing beads of a dairy product; to prevent the beads from sticking together and to have the beads remaining free-flowing, the beads must be maintained at a relatively low temperature, at least as low as –20 degrees F and preferably at a temperature between –30 and –40 degrees F. The dippin' dots publication provides nutrition facts and corporate history relating to tiny beads of ice cream; it refers to "(d)eveloping new flavours", and has been characterized in the Office Action as disclosing pellets of varying colors and/or flavors.

All of applicants' claims include frozen pellets comprising a milk fluid in a defined percentage, inulin providing fiber, sweetness, and raising the melting point of the pellets relative to sucrose, a flavoring, a sweetener, and a stabilizer mix, and being unaerated. Additionally, independent claim 49 (and claims 2–4, 6–14, 16-19, 21–22 and 52-54 dependent thereon) define first frozen pellets and second frozen pellets wherein the second frozen pellets are of different milk fluid percentage composition than said first frozen pellets. As the Examiner has noted in the Office Action, these claims differ from the cited references as to the specific recitation of two pellets. And, as amended, these claims specifically recite that the first and second pellets differ in milk fluid percentage composition. It is also noted that claims 37, 52 and 57, respectively dependent from independent claims 51, 49 and 50, each further comprise a container for mixing frozen pellets and also an insulated carrier for said container.


It is respectfully submitted that the cited references neither teach nor suggest applicants' invention as presented in all of the claims, and that the rejection under 35 USC § 103(a) as being unpatentable over Bee and Jones in view of the dippin' dots article has been overcome and should be withdrawn.

Applicants respectfully request consideration of and allowance of claims 2 – 4, 6 – 14, 14, 16-19, 21–22, 32–35, 37–38 and 49-57. It is submitted that the Present Application is in condition for allowance, which action is respectfully requested.

The Examiner is invited to telephone the undersigned if such would advance the prosecution of the Application.

Respectfully submitted,

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